

Mandatory Reference: 601
Supplementary Reference: N/A
File Name: ads15/60157m1

INHERENTLY GOVERNMENTAL FUNCTIONS (AS DEFINED BY THE OFFICE OF MANAGEMENT AND BUDGET in Office of Federal Procurement Policy Letter 92-1, September 23, 1992.)

The following is an illustrative list of functions considered to be inherently governmental (portions in all capital letters were added to the OMB definition for clarity).

1. Conduct of criminal investigations;
2. Conduct of foreign relations and the determination of foreign policy;
3. Determination of Agency policy, such as determining the substance and application of regulations;
4. Determination of Federal program priorities or budget requests;
5. Direction and control of Federal employees;
6. Approval of Congressional testimony prepared for delivery by a Federal official;
7. Approval of Agency responses to Congressional correspondence;
8. Selection or nonselection of individuals for Federal Government employment (INCLUDING PSCs);
9. Approval of position descriptions and performance standards for Federal employees;
10. Determination of what Government property is to be disposed of and on what terms;
11. In Federal Procurement activities:
 - (a) Determining what property or services are to be acquired by the Government;
 - (b) Participating as a voting member on any boards or in any meetings regarding evaluation of contractor proposals, to include final source selection;

- (c) Approval of any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria;
 - (d) Awarding contracts;
 - (e) Administering contracts (including the order of changes in contract performance or contract quantities, evaluating contractor performance, and accepting or rejecting contractor products or services);
 - (f) Terminating contracts; and
 - (g) Determining whether contract costs are reasonable, allocable, and allowable.
12. Approval of Agency responses to audit reports from an inspector general, the General Accounting Office, or other Federal audit entity;
 13. Approval of Freedom of Information Act requests, other than routine requests that do not require the exercise of judgment;
 14. Conduct of administrative hearings to determine the eligibility of any person for a security clearance, or involving actions that affect matters of personal reputation or basic eligibility to participate in Government programs;
 15. Determination of budget policy, guidance, and strategy;
 16. Collection, control, and disbursement of fees, royalties, duties, fines, taxes, and other public funds; and
 17. Administration of public trusts.

In addition to the above examples of inherently governmental functions, there are many functions which, while not totally falling into the category of inherently governmental, are closely related to inherently governmental and should be reviewed carefully, in conjunction with review of "cost of doing business" in determining whether to use OE or program funds for their accomplishment. Examples of these functions include:

1. Services that involve or relate to budget preparation, including workload modeling, fact finding, efficiency studies, and should-cost analyses, etc.;
2. Services that involve or relate to reorganization and planning activities;
3. Services that involve or relate to analyses, feasibility studies, and strategy options to be used by Agency personnel in developing policy;

4. Services that involve or relate to the development of regulations;
5. Services that involve or relate to the evaluation of another contractor's performance. EVALUATION IN THIS CONTEXT DOES NOT REFER TO PROGRAM/TECHNICAL EVALUATIONS;
6. Services in support of strategic acquisition planning;
7. Contractors' providing assistance in contract management (such as where the contractor might influence official evaluations of other contractors);
8. Contractors' providing technical evaluation of contract proposals;
9. Contractors' providing specialized expertise in the development of statements of work;
10. Contractors' providing support in preparing responses to Freedom of Information Act requests;
11. Contractors' working in any situation that permits or might permit them to gain access to confidential business information and/or any other sensitive information;
12. Contractors' providing information regarding Agency policies or regulations, such as attending conferences on behalf of an Agency, conducting community relations campaigns, or conducting Agency training courses;
13. NON-PSC contractors' participation in any situation where it might be assumed that the contractors are Agency employees or representatives;
14. Contractors' participating as nonvoting members of, or technical advisors to, a source selection board or source selection evaluation board;
15. Contractors' serving as arbitrators or as other persons hired to provide alternative methods of dispute resolution;
16. Contractors' providing inspection services; and
17. Contractors' providing legal advice and interpretations of regulations and statutes to Government officials'